

**TESTIMONY OF TODD BAXTER, VICE PRESIDENT OF GOVERNMENTAL
AFFAIRS AND GENERAL COUNSEL FOR THE TEXAS CABLE ASSOCIATION
REGARDING RIGHTS-OF-WAY CHARGES (POLE ATTACHMENTS)**

**BEFORE THE SENATE COMMITTEE ON BUSINESS AND COMMERCE
Tuesday, August 14, 2012**

**GOOD MORNING MR. CHAIRMAN AND MEMBERS. MY NAME IS TODD
BAXTER, AND I AM THE VICE PRESIDENT OF GOVERNMENTAL AFFAIRS AND
GENERAL COUNSEL FOR THE TEXAS CABLE ASSOCIATION.**

**I AM HERE TODAY TO GIVE SOME BACKGROUND AS TO WHY LEGISLATION IS
NEEDED ON THE ISSUE OF POLE ATTACHMENTS AND TO PROVIDE AN
UPDATE ON THE STATUS OF NEGOTIATIONS WITH THE TEXAS ELECTRIC
COOPERATIVES WITH AN EYE TOWARDS THE 83RD LEGISLATIVE SESSION.**

**I WOULD LIKE TO MENTION AT THE OUTSET THAT TCA, AT&T AND VERIZON
ARE WORKING TOGETHER AS A COALITION OF ATTACHERS IN THESE
NEGOTIATIONS SINCE OUR GOALS AND EXPERIENCES WITH THE CO-OPS
HAVE BEEN SIMILAR. I AM, HOWEVER, TESTIFYING ON BEHALF OF TCA
TODAY.**

**TCA REPRESENTS SEVEN CABLE COMPANIES THAT PROVIDE VOICE, VIDEO
AND HIGH SPEED INTERNET SERVICES TO MILLIONS OF HOMES AND
BUSINESSES THROUGHOUT TEXAS. OUR MEMBER COMPANIES HAVE BEEN
LEADING THE WAY IN INNOVATION AND DEPLOYMENT OF THESE SERVICES**

WHILE EMPLOYING DIRECTLY AND INDIRECTLY OVER 125,000 TEXANS AND GENERATING BILLIONS OF DOLLARS FOR THE TEXAS ECONOMY.

LIKE ALL FACILITIES-BASED COMMUNICATIONS COMPANIES, TCA'S MEMBERS HAVE LITTLE CHOICE BUT TO ATTACH THEIR CABLE WIRES TO EXISTING UTILITY POLES IN ORDER TO PROVIDE THEIR SERVICES. INSTALLING DUPLICATE SETS OF POLES IN THE PUBLIC RIGHTS-OF-WAY IS USUALLY FORBIDDEN BY LOCAL GOVERNMENTS DUE TO RIGHT-OF-WAY SPACE LIMITATIONS, AS WELL AS AESTHETIC, ENVIRONMENTAL AND OTHER SIMILAR CONSTRAINTS.

CURRENTLY, THERE IS NO LEGISLATION OR REGULATION THAT GOVERNS ACCESS TO ELECTRIC COOPERATIVE POLES IN TEXAS. THIS ABSENCE HAS CREATED CONFLICTS BETWEEN THE PARTIES BECAUSE COMMUNICATIONS ATTACHERS NEED ACCESS TO THESE ESSENTIAL FACILITIES AND THERE IS NO REQUIREMENT FOR COOPERATIVES TO PROVIDE ACCESS, NOR ARE THERE ANY STATUTORY REQUIREMENTS FOR REASONABLE RATES, TERMS AND CONDITIONS.

INVESTOR-OWNED UTILITIES IN THE STATE OF TEXAS ARE REQUIRED BY FEDERAL LAW TO ALLOW NONDISCRIMINATORY ACCESS TO THEIR POLES AT JUST AND REASONABLE RATES, TERMS AND CONDITIONS, AND ARE SUBJECT TO REGULATORY OVERSIGHT. THE STATE'S MUNICIPAL POLE

OWNERS ARE ALSO SUBJECT TO COST-BASED POLE ATTACHMENT RENT PRICE CAPS AND REQUIRED TO MAKE THEIR POLES AVAILABLE ON A NONDISCRIMINATORY BASIS.

IN STARK CONTRAST, AND TO THE DETRIMENT OF THE STATE'S CONSUMERS, THE STATE'S ELECTRIC COOPERATIVES ARE CURRENTLY FREE TO DENY ACCESS TO THEIR POLES OR THREATEN EXPULSION FROM THEIR POLES, DEMAND UNREASONABLE POLE ATTACHMENT AGREEMENT TERMS AND CONDITIONS, AND CHARGE EXCESSIVE POLE RENTS THAT ARE OFTEN TWO TO THREE TIMES (OR MORE) HIGHER THAN THE RATES CHARGED BY TEXAS INVESTOR-OWNED UTILITIES—AND THIS INCLUDES COOPERATIVES WHOSE AFFILIATES OFFER VOICE, DATA OR VIDEO SERVICES AND THUS COMPETE DIRECTLY WITH TCA MEMBERS. THE ABSENCE OF A COST-EFFECTIVE FORUM FOR RESOLVING DISPUTES BETWEEN ELECTRIC COOPERATIVES AND THEIR ATTACHERS, SHORT OF A LENGTHY AND COSTLY LAW SUIT, FURTHER EXCERABATES THE COOPERATIVES' COMPLETE CONTROL OVER ACCESS TO THIS CRITICAL MONOPOLY RESOURCE.

LEGISLATION IS NECESSARY TO REMEDY THESE INEQUITIES AND GUARANTEE COST-BASED AND EFFICIENT ACCESS TO UTILITY POLES. I WANT TO THANK ERIC CRAVEN AND THE CO-OPS FOR THEIR WILLINGNESS TO COLLABERATE WITH US THIS INTERIM TO ATTEMPT TO FIND COMMON

GROUND ON THESE ISSUES, AND TCA, VERIZON AND AT&T WELCOME THE OPPORTUNITY TO CONTINUE WORKING WITH THEM TO COME UP WITH A MUTUALLY BENEFICIAL LEGISLATIVE SOLUTION SO THAT TEXAS CONSUMERS RECEIVE THE FULL COMPLIMENT OF ADVANCED COMMUNICATIONS SERVICES THEY DEMAND AT AFFORDABLE PRICES.

TO DATE, WE HAVE MET WITH THE COOPS TWICE TO DISCUSS THE BROAD OUTLINES OF THE LEGISLATION AND THE ISSUES THAT ARE IMPORTANT TO BOTH SIDES. SINCE THE LAST MEETING, THE PARTIES HAVE TRADED OUTLINES OF THE ITEMS BOTH PARTIES WOULD LIKE TO SEE INCLUDED IN THE LEGISLATION AND WILL MEET AGAIN ON AUGUST 23RD TO CONTINUE OUR DISCUSSIONS.

ITEMS THAT WE BELIEVE ARE ESSENTIAL IN ANY EFFECTIVE COOPERATIVE POLE ATTACHMENT LEGISLATION INCLUDE, BUT ARE NOT LIMITED TO:

- A PROVISION ENSURING THAT THE RATES, TERMS AND CONDITIONS DEMANDED BY COOPS BE JUST, REASONABLE AND NON-DISCRIMINATORY;**
- A MANDATORY ACCESS REQUIREMENT PROVIDING THAT ACCESS MAY BE DENIED ONLY FOR OBJECTIVE AND NONDISCRIMINATORY REASONS RELATED TO CAPACITY AND ENGINEERING LIMITATIONS;**

- **A COST-BASED RATE FORMULA, FOLLOWING THE FEDERAL COMMUNICATIONS COMMISSION’S “CABLE RATE FORMULA,” WHICH IS USED IN THE VAST MAJORITY OF STATES, AND USED BY TEXAS INVESTOR OWNED UTILITIES TEXAS AND TEXAS MUNICIPALLY OWNED UTILITIES.**
- **AN ACCESS AND MAKE-READY TIMELINE TO ENSURE THAT ATTACHERS CAN SERVE THEIR CUSTOMERS IN A COST-EFFECTIVE, EFFICIENT AND PREDICTABLE MANNER;**
- **AN EQUITABLE PROCESS FOR THE DETECTION AND CORRECTION OF SAFETY VIOLATIONS (WHICH ARE CAUSED BY POLE OWNER AND ATTACHER ALIKE) SO THAT COMMUNICATIONS ATTACHERS ARE NOT FORCED TO PAY TO CORRECT VIOLATIONS THEY DID NOT CAUSE;**
- **A REASONABLE, COST-BASED PENALTY WHEN ATTACHERS FAIL TO OBTAIN THE REQUISITE PERMISSION TO ATTACH TO COOP POLES; AND**

- **AN EFFICIENT, COST-EFFECTIVE AND EXPERIENCED FORUM TO RESOLVE DISPUTES THAT THE PARTIES ARE UNABLE TO RESOLVE AND ENFORCE APPLICABLE LAW.**

LEGISLATION THAT INCLUDES THESE PROVISIONS WILL NOT ONLY REMEDY THE CURRENT POLE ATTACHMENT ACCESS AND COST ISSUES THAT HAVE CAUSED CONFLICT BETWEEN THE PARTIES, BUT ALSO BENEFIT TEXAS CONSUMERS IN THE FORM OF MORE AFFORDABLE AND HIGH-QUALITY SERVICES.

THANK YOU FOR ALLOWING ME THE OPPORTUNITY TO TESTIFY TODAY ON THIS CRITICAL LEGISLATION. I AM HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.